

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 204(a) of Pub. L. 90-257 effective with respect to calendar days in benefit years beginning after June 30, 1968, and amendment by section 204(b) of Pub. L. 90-257 effective with respect to voluntary leaving of work (within the meaning of subsec. (a-2)(i) this section) after February 15, 1968, see section 208 of Pub. L. 90-257, set out as a note under section 352 of this title.

EFFECTIVE DATE OF 1963 AMENDMENT

Section 302(b) of Pub. L. 88-133 provided that: "The amendment made by subsection (a) [amending this section] shall be effective only with respect to an employee who leaves work voluntarily after the date of enactment of this Act [Oct. 5, 1963]."

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86-28 effective with respect to benefits accruing in general benefit years which begin after the benefit year ending June 30, 1958, and in extended benefit periods which begin after Dec. 31, 1957, see section 309 of Pub. L. 86-28, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-927 effective with respect to days in benefit years after the benefit year ending on June 30, 1958, see section 207(a) of Pub. L. 85-927, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1951 AMENDMENT

Amendment by act Oct. 30, 1951, effective with respect to registration periods beginning on and after Jan. 1, 1952, see section 28 of act Oct. 30, 1951, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1946 AMENDMENT

Amendment by act July 31, 1946, effective July 1, 1947, see section 403 of act July 31, 1946, set out as a note under section 352 of this title.

EFFECTIVE DATE OF 1940 AMENDMENT

For effective date of amendment by act Oct. 10, 1940, see section 1 of act Oct. 10, 1940, set out as a note under section 351 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 351, 362 of this title.

§ 355. Claims for benefits**(a) Publication of Board's regulations**

Claims for benefits and appeals from determinations with respect thereto shall be made in accordance with such regulations as the Board shall prescribe. Each employer shall post and maintain, in places readily accessible to employees in his service, such printed statements concerning such regulations as the Board supplies to him for such purpose, and shall keep available to his employees copies of such printed statements. Such printed statements shall be supplied by the Board to each employer without cost to him.

(b) Findings, hearings, investigations, etc., by Board

The Board is authorized and directed to make findings of fact with respect to any claim for benefits and to make decisions as to the right of any claimant to benefits. The Board is further authorized to hold such hearings, to conduct such investigations and other proceedings, and

to establish, by regulations or otherwise, such procedures as it may deem necessary or proper for the determination of a right to benefits. When a claim for benefits is filed with the Board, the Board shall provide notice of such claim to the claimant's base-year employer or employers and afford such employer or employers an opportunity to submit information relevant to the claim before making an initial determination on the claim. When the Board initially determines to pay benefits to a claimant under this chapter, the Board shall provide notice of such determination to the claimant's base-year employer or employers.

(c) Hearing and review of decisions on claims

(1) Each qualified employee whose claim for benefits has been denied in whole or in part upon an initial determination with respect thereto upon a basis other than one which is reviewable pursuant to one of the succeeding paragraphs of this subsection, shall be granted an opportunity for a fair hearing thereon before a referee or such other reviewing body as the Board may establish or assign thereto. In any such case the Board or the person or reviewing body so established or assigned shall, by publication or otherwise, notify all parties properly interested of their right to participate in the hearing and of the time and place of the hearing.

(2) Any claimant whose claim for benefits has been denied in an initial determination with respect thereto upon the basis of his not being a qualified employee, and any claimant who contends that under an initial determination of his claim he has been awarded benefits at less than the proper rate, may appeal to the Board for the review of such determination. Thereupon the Board shall review the determination and for such review may designate one of its officers or employees to receive evidence and to report to the Board thereon together with recommendations. In any such case the Board or the person so designated shall, by publication or otherwise, notify all parties properly interested of their right to participate in the proceeding and, if a hearing is to be held, of the time and place of the hearing. At the request of any party properly interested the Board shall provide for a hearing, and may provide for a hearing on its own motion. The Board shall prescribe regulations governing the appeals provided for in this paragraph and for decisions upon such appeal.

(3) Any base-year employer of a claimant whose claim for benefits has been granted in whole or in part, either in an initial determination with respect thereto or in a determination after a hearing pursuant to paragraph (1), and who contends that the determination is erroneous for a reason or reasons other than a reason that is reviewable under paragraph (4), may appeal to the Board for review of such determination. Despite such an appeal, the benefits awarded shall be paid to such claimant, subject to recovery by the Board if and to the extent found on the appeal to have been erroneously awarded. The Board shall take such action as is appropriate to recover the amount of such benefits including if feasible adjustment in subsequent payments pursuant to the first two paragraphs of section 352(d) of this title. Upon an ap-

peal, the Board shall review the determination appealed from and for such review may designate one of its officers or employees to receive evidence and report to the Board thereof together with recommendations. In any such case the Board or the person so designated shall, by publication or otherwise, notify all parties properly interested of their right to participate in the proceeding and, if a hearing is to be held, of the time and place of the hearing. At the request of any party properly interested the Board shall provide for a hearing, and may provide for a hearing on its own motion. The Board shall prescribe regulations governing the appeals provided for in this paragraph and for decisions upon such appeal.

(4) In any case in which benefits are awarded to a claimant in whole or in part upon the basis of pay earned in the service of a person or company found by the Board to be an employer as defined in this chapter but which denies that it is such an employer, such benefits awarded on such basis shall be paid to such claimant subject to a right of recovery of such benefits. The Board shall thereupon designate one of its officers or employees to receive evidence and to report to the Board on whether such benefits should be repaid. The Board may also designate one of its officers or employees to receive evidence and report to the Board whether or not any person or company is entitled to a refund of contributions or should be required to pay contributions under this chapter, regardless of whether or not any claims for benefits will have been filed upon the basis of service in the employ of such person or company, and shall follow such procedure if contributions are assessed and payment is refused or payment is made and a refund claimed upon the basis that such person or company is or will not have been liable for such contributions. In any such case the Board or the person so designated shall, by publication or otherwise, notify all parties properly interested of their right to participate in the proceeding and, if a hearing is to be held, of the time and place of the hearing. At the request of any party properly interested the Board shall provide for a hearing, and may provide for a hearing on its own motion. The Board shall prescribe regulations governing the proceedings provided for in this paragraph and for decisions upon such proceedings.

(5) Final decision of the Board in the cases provided for in the preceding three paragraphs shall be communicated to the claimant and to the other interested parties within fifteen days after it is made. Any properly interested party notified, as hereinabove provided, of his right to participate in the proceedings may obtain a review of any such decision by which he claims to be aggrieved or the determination of any issue therein in the manner provided in subsection (f) of this section with respect to the review of the Board's decisions upon claims for benefits and subject to all provisions of law applicable to the review of such decisions. Subject only to such review, the decision of the Board upon all issues determined in such decision shall be final and conclusive for all purposes and shall conclusively establish all rights and obligations, arising under this chapter, of every party notified as

hereinabove provided of his right to participate in the proceedings.

(6) For purposes of this subsection and subsections (d) and (f) of this section, any base-year employer of the claimant is a properly interested party.

(7) Any issue determinable pursuant to this subsection and subsection (f) of this section shall not be determined in any manner other than pursuant to this subsection and subsection (f) of this section.

(d) Decisions of reviewing bodies; review and finality

The Board shall prescribe regulations governing the filing of cases with and the decision of cases by reviewing bodies, and the review of such decisions. The Board may provide for intermediate reviews of such decisions by such bodies as the Board may establish or assign thereto. The Board may (i) on its own motion review a decision of an intermediate reviewing body on the basis of the evidence previously submitted in such case, and may direct the taking of additional evidence, or (ii) permit such parties as it finds properly interested in the proceedings to take appeals to the Board. Unless a review or an appeal is had pursuant to this subsection, the decision of an intermediate reviewing body shall, subject to such regulations as the Board may prescribe, be deemed to be the final decision of the Board.

(e) Application of rules of evidence in law and equity; notice of findings

In any proceeding other than a court proceeding, the rules of evidence prevailing in courts of law or equity shall not be controlling, but a full and complete record shall be kept of all proceedings and testimony, and the Board's final determination, together with its findings of fact and conclusions of law in connection therewith, shall be communicated to the parties within fifteen days after the date of such final determination.

(f) Review of final decision of Board by Courts of Appeals; costs

Any claimant, or any railway labor organization organized in accordance with the provisions of the Railway Labor Act [45 U.S.C. 151 et seq.], of which claimant is a member, or any base-year employer of the claimant, or any other party aggrieved by a final decision under subsection (c) of this section, may, only after all administrative remedies within the Board will have been availed of and exhausted, obtain a review of any final decision of the Board by filing a petition for review within ninety days after the mailing of notice of such decision to the claimant or other party, or within such further time as the Board may allow, in the United States court of appeals for the circuit in which the claimant or other party resides or will have had his principal place of business or principal executive office, or in the United States Court of Appeals for the Seventh Circuit or in the United States Court of Appeals for the District of Columbia. A copy of such petition, together with initial process, shall forth-with be served upon the Board or any officer designated by it for such purpose. A copy of such petition also shall forthwith be served

upon any other properly interested party, and such party shall be a party to the review proceeding. Service may be made upon the Board by registered mail addressed to the Chairman. Within thirty days after receipt of service, or within such additional time as the court may allow, the Board shall file with the court in which such petition has been filed the record upon which the findings and decision complained of are based, as provided in section 2112 of title 28. Upon the filing of such petition the court shall have exclusive jurisdiction of the proceeding and of the question determined therein. It shall have power to enter a decree affirming, modifying, or reversing the decision of the Board, with or without remanding the cause for rehearing. The findings of the Board as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive. No additional evidence shall be received by the court but the court may order additional evidence to be taken before the Board, and the Board may, after hearing such additional evidence, modify its findings of fact and conclusions and file such additional or modified findings and conclusions with the court, and the Board shall file with the court the additional record. The judgment and decree of the court shall be final, subject to review as in equity cases.

An applicant for review of a final decision of the Board concerning a claim for benefits shall not be liable for costs, including costs of service, or costs of printing records, except that costs may be assessed by the court against such applicant if the court determines that the proceedings for such review have been instituted or continued without reasonable ground.

(g) Finality of Board decisions

Findings of fact and conclusions of law of the Board in the determination of any claim for benefits or refund, the determination of any other matter pursuant to subsection (c) of this section, and the determination of the Board that the unexpended funds in the account are available for the payment of any claim for benefits or refund under this chapter, shall be, except as provided in subsection (f) of this section, binding and conclusive for all purposes and upon all persons, including the Comptroller General and any other administrative or accounting officer, employee, or agent of the United States, and shall not be subject to review in any manner other than that set forth in subsection (f) of this section.

(h) Benefits payable prior to final decision of Board

Except as may be otherwise prescribed by regulations of the Board, benefits payable with respect to any period prior to the date of a final decision of the Board with respect to a claim therefor, shall be paid only after such final decision.

(i) Fees for presenting claims; penalties

No claimant or other properly interested person claiming benefits shall be charged fees of any kind by the Board, its employees or representatives, with respect to such claim. Any such claimant or other properly interested person may be represented by counsel or other duly

authorized agent, in any proceeding before the Board or its representatives or a court, but no such counsel or agent for a claimant shall either charge or receive for such services more than an amount approved by the Board or by the court before whom the proceedings of the Board are reviewed. Any person who violates any provision of this subsection shall be punished by a fine of not more than \$10,000 or by imprisonment not exceeding one year.

(June 25, 1938, ch. 680, § 5, 52 Stat. 1099; Oct. 10, 1940, ch. 842, §§ 19, 20, 54 Stat. 1098; July 31, 1946, ch. 709, §§ 311–316, 60 Stat. 738; June 25, 1948, ch. 646, §§ 1, 32(a), 62 Stat. 870, 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Pub. L. 85–791, § 23, Aug. 28, 1958, 72 Stat. 948; Pub. L. 97–35, title XI, § 1128(a), Aug. 13, 1981, 95 Stat. 641; Pub. L. 98–620, title IV, § 402(47), Nov. 8, 1984, 98 Stat. 3360; Pub. L. 100–647, title VII, § 7104(a)–(c), Nov. 10, 1988, 102 Stat. 3771.)

REFERENCES IN TEXT

The Railway Labor Act, referred to in subsec. (f), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§ 151 et seq.) of this title. For complete classification of this Act to the Code, see section 151 of this title and Tables.

CODIFICATION

In subsec. (f), “Courts of Appeals”, “United States court of appeals for the circuit”, “United States Court of Appeals for the Seventh Circuit” substituted for “Circuit Courts of Appeals”, “United States circuit court of appeals for the circuit”, and “United States Circuit Court of Appeals for the Seventh Circuit”, respectively, on authority of act June 25, 1948, § 32(a), as amended by act May 24, 1949, § 127. “United States Court of Appeals for the District of Columbia” substituted for “Court of Appeals for the District of Columbia” pursuant to act June 7, 1934, ch. 426, 48 Stat. 926.

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–647, § 7104(a), inserted at end “When a claim for benefits is filed with the Board, the Board shall provide notice of such claim to the claimant’s base-year employer or employers and afford such employer or employers an opportunity to submit information relevant to the claim before making an initial determination on the claim. When the Board initially determines to pay benefits to a claimant under this chapter, the Board shall provide notice of such determination to the claimant’s base-year employer or employers.”

Subsec. (c)(1). Pub. L. 100–647, § 7401(b)(1), (2), inserted “(1)” after “(c)” and inserted at end “In any such case the Board or the person or reviewing body so established or assigned shall, by publication or otherwise, notify all parties properly interested of their right to participate in the hearing and of the time and place of the hearing.”

Subsec. (c)(2). Pub. L. 100–647, § 7104(b)(3), inserted “(2)” before “Any claimant whose claim”.

Subsec. (c)(3). Pub. L. 100–647, § 7104(b)(4), added par. (3).

Subsec. (c)(4). Pub. L. 100–647, § 7104(b)(5), inserted “(4)” before “In any case in which”.

Subsec. (c)(5). Pub. L. 100–647, § 7104(b)(6), (7), inserted “(5)” before “Final decision of the Board” and substituted “preceding three paragraphs” for “preceding two paragraphs”.

Subsec. (c)(6). Pub. L. 100–647, § 7104(b)(8), added par. (6).

Subsec. (c)(7). Pub. L. 100–647, § 7104(b)(9), inserted “(7)” before “Any issue determinable”.

Subsec. (f). Pub. L. 100–647, § 7104(c), inserted “or any base-year employer of the claimant,” after “member,”

and inserted after second sentence “A copy of such petition also shall forthwith be served upon any other properly interested party, and such party shall be a party to the review proceeding.”

1984—Subsec. (f). Pub. L. 98-620 struck out provision requiring court to give precedence in adjudication of petition over all other civil cases not otherwise entitled by law to precedence.

1981—Subsec. (f). Pub. L. 97-35 substituted “Within thirty days” for “Within fifteen days”.

1958—Subsec. (f). Pub. L. 85-791, in fourth sentence, struck out “certify and” after “shall” and “a transcript of” after “filed”, and inserted “as provided in section 2112 of title 28”; in fifth sentence, substituted “the filing of such petition” for “such filing”; in sixth sentence, struck out “upon the pleadings and transcript of the record,” after “enter”; and in eighth sentence struck out “a transcript of” before “the additional record”.

1946—Subsec. (c). Act July 31, 1946, §311, struck out provisions for district boards, placing their functions in referees or such other reviewing bodies as Board may establish; changed third par. to allow Board to determine if a person or company is covered by this chapter regardless of whether or not benefit claims are pending; and added last par.

Subsec. (d). Act July 31, 1946, §312, changed references to district boards to refer to reviewing bodies.

Subsec. (e). Act July 31, 1946, §313, struck out provisions restricting subsection to proceedings on a claim for benefits.

Subsec. (f). Act July 31, 1946, §314, changed first sentence to provide for review by circuit courts of appeals instead of district courts.

Subsec. (g). Act July 31, 1946, §315, inserted reference to determination of any other matter pursuant to subsec. (c) of this section.

Subsec. (i). Act July 31, 1946, §316, extended provisions to other properly interested persons besides a claimant.

1940—Subsec. (c). Act Oct. 10, 1940, substituted provisions relating to a fair hearing for each qualified employee for provisions relating to a fair hearing for each claimant, and added paragraphs relating to review for claimants denied benefits on basis of not being a qualified employee or awarded benefits at an improper rate, payment of benefits to employees of noncomplying employers, and final decisions of Board.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 7104(f) of Pub. L. 100-647 provided that: “The amendments made by this section [amending this section and section 362 of this title] shall take effect on January 1, 1990.”

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as a note under section 1657 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, and applicable only with respect to annuities awarded on or after that date, see section 1129 of Pub. L. 97-35, set out as a note under section 231 of this title.

EFFECTIVE DATE OF 1946 AMENDMENT

Amendment by act July 31, 1946, effective July 31, 1946, see section 401 of act July 31, 1946.

EFFECTIVE DATE OF 1940 AMENDMENT

For effective date of amendment by act Oct. 10, 1940, see section 1 of act Oct. 10, 1940, set out as a note under section 351 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 362 of this title.

§ 355a. Acceptance of claims for benefits

Whenever there is duly tendered to the Board, by any person, any claim for unemployment compensation pursuant to the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.], such claim shall be accepted by the Board without delay and appropriate administrative action for the allowance or disallowance of such claim shall be taken by the Board at the earliest practicable time.

(June 29, 1956, ch. 477, title V, §501, 70 Stat. 437.)

REFERENCES IN TEXT

The Railroad Unemployment Insurance Act, referred to in text, is act June 25, 1938, ch. 680, 52 Stat. 1094, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 367 of this title and Tables.

CODIFICATION

Section was enacted as part of act June 29, 1956, popularly known as the Departments of Labor, and Health, Education, and Welfare, Appropriation Act, 1957, and not as a part of the Railroad Unemployment Insurance Act which comprises this chapter.

PRIOR PROVISIONS

Similar provisions were contained in the following prior appropriation act: Aug. 1, 1955, ch. 437, title V, §501, 69 Stat. 411.

§ 356. Returns of compensation; conclusiveness; failure to make

Employers shall file with the Board, in such manner and at such times as the Board by regulations may prescribe, returns of compensation of employees, and, if the Board shall so require, shall distribute to employees annual statements of compensation: *Provided*, That no returns shall be required of employers which would duplicate information contained in similar returns required under any other Act of Congress administered by the Board. The Board's record of the compensation so returned shall, for the purpose of determining eligibility for and the amount of benefits, be conclusive as to the amount of compensation paid to an employee during the period covered by the return, and the fact that the Board's records show that no return was made of the compensation claimed to have been paid to an employee during a particular period shall, for the purposes of determining eligibility for and the amount of benefits, be taken as conclusive that no compensation was paid to such employee during that period, unless the error in the amount of compensation in the one case, or failure to make or record return of the compensation in the other case, is called to the attention of the Board within eighteen months after the date on which the last return covering any portion of the calendar year which includes such period is required to have been made.

(June 25, 1938, ch. 680, §6, 52 Stat. 1101; June 20, 1939, ch. 227, §12, 53 Stat. 847; Oct. 10, 1940, ch. 842, §21, 54 Stat. 1099; July 31, 1946, ch. 709, §317, 60 Stat. 739; Pub. L. 89-700, title II, §203, Oct. 30, 1966, 80 Stat. 1087.)

AMENDMENTS

1966—Pub. L. 89-700 struck out provisions which required returns of compensation of employees to be under oath.